

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MARILYN P. JONES,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

§
§
§
§
§
§
§

Civil Action No. 4:15-cv-03619

**AGREED MOTION TO WAIVE MEDIATION REQUIREMENT, OR
ALTERNATIVELY, TO RESCHEDULE MEDIATION**

TO THE HONORABLE LEE H. ROSENTHAL:

The Parties in the above-styled and numbered civil action respectfully request that the Court grant them leave to waive the mediation requirement as set forth in the Scheduling and Docket Control Order, or alternatively, to allow the parties to reschedule the mediation at a later date, so long as a mediation is held before the due date of the Joint Pretrial Order. In support, the Parties show:

**I.
Background**

1. In the Scheduling and Docket Control Order, the Parties have been ordered to engage in mediation or other form of dispute resolution. (ECF no. 12). The current deadline is November 14, 2016. (ECF no. 18).

2. The deadline to file pretrial motions is November 18, 2016. (ECF no. 12). The Defendant filed a motion for a final summary judgment on November 3, 2016. (ECF no. 21). The

Plaintiff must file a response by November 25, 2016.¹ The Plaintiff does not anticipate filing a cross-motion.

3. The deadline for the parties to file a Joint Pretrial Order is January 20, 2017. (ECF no. 12).

II. Relief Requested

4. Counsel for the parties have discussed the issues in dispute in this case as well as how this case could be settled. They do not believe that a mediation would be productive; rather, the parties believe that settlement discussions would be the most productive way to try to settle this case. This is a relatively routine type of case that the Internal Revenue Service and the Department of Justice handle. They have established procedures for evaluating settlement offers as well as evaluating the ultimately collectability of a settlement or judgment. Therefore, a mediation would not be productive or efficient.

5. Moreover, until the Court rules on the pending motion for summary judgment, any settlement discussions would likely be limited to collectability only.

6. Finally, counsel believe that no party is so entrenched in their position that settlement discussions cannot take place without the aid of a neutral arbiter. Therefore, the parties respectfully request that the Court waive the requirement that they be required to engage in a mediation.

7. Alternatively, should the Court determine that a mediation would be proper, the Parties respectfully request that the Court grant them leave to conduct the mediation at any point

¹ The Plaintiff may request a continuance of this deadline due to the reasons stated in Paragraph 7, *infra*.

prior to the due date of the Joint Pretrial Order—January 20, 2017. This additional time would be helpful so that the Court could have time to rule on the Defendant’s Motion for Summary Judgment. Additionally, Plaintiff’s counsel may need additional time to finalize any response to the motion and to schedule any mediation because, it is virtually certain that he will have to undergo abdominal surgery within the next several weeks, the extent of it and the ultimate length of the recovery is unknown as of this date. Therefore, this extension of time would provide the parties with the most flexibility.

8. WHEREFORE, premises considered, Marilyn P. Jones and the United States of America respectfully request that the Court waive the mediation requirement, and alternatively, allow them until January 20, 2017 to complete such mediation.

Respectfully Submitted,

PENDERGRAFT & SIMON, LLP

/s/ William P. Haddock

WILLIAM P. HADDOCK

Texas Bar No. 00793875

S.D.Tex. Adm. No. 19637

2777 Allen Parkway, Suite 800

Houston, TX 77019

Tel. (713) 528-8555

Fax. (713) 868-1267

Counsel for Plaintiff

Kenneth Magidson

United States Attorney

/s/ Stephanie M. Page^{*with permission}

Stephanie M. Page

Attorney, Tax Division

Texas Bar No. 13428240

Department of Justice

717 N. Harwood, Suite 400

Dallas, TX 75201

Tel. 214-880-9749

Fax. 214-880-9741

Counsel for The United States

Certificate of Service

I hereby certify that a true and correct copy of the above Agreed Motion to Waive Mediation Requirement, or Alternatively, to Reschedule Mediation has been served on the following counsel/parties of record in accordance with Fed. R. Civ. P. 5 and administrative rules for ECF filing and service on this 10th day of November 2016:

Parties having appeared via ECF:

Stephanie M. Page
Attorney, Tax Division
Department of Justice

/s/ William P. Haddock
William P. Haddock